IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 582 of 2005

Smt. Rajni H. Uppal
W/o Harish Uppal,
Presently posted as Principal,
Central School, Raiwala, P.S. Raiwala,
District Dehradun.

…… Applicant

Versus

1. Special Judicial Magistrate –I,
   Dehradun (Uttaranchal).
2. Mrs. Kalpana Gahoi
   W/o Mr. Gyan Prakash Gahoi,
   R/o 9/7, Mahant Quarters, Idgah,
   Chakrata Road, P.S. Cantt., Dehradun.

……. Respondents

Mr. Harish Uppal, Advocate for the petitioner.
Mr. Lokendra Dobhal, for respondent No. 2.

Hon'ble Prafulla C. Pant, J.

Heard learned counsel for the parties.

2) By means of this petition, moved under Section 482 of the Code of Criminal Procedure, 1973, the petitioner Smt. Rajni H. Uppal, a Principal in Central School, Raiwala, Dehradun, had challenged the order dated 12th July, 2005, whereby she is summoned as an accused in criminal complaint case No. 08 of 2005, instituted by respondent No. 2 Smt. Kalpana Gahoi, for the offence allegedly committed by her punishable under Section 500

of the Indian Penal Code, 1860 (hereinafter referred as I.P.C).

3) Annexue -3 to the petition shows that the petitioner was appointed as Presenting Officer in an enquiry under Rule 14 of Central Civil Services (Classification and Appeal) Rules, 1965, in departmental enquiry initiated against respondent No. 2 Smt. Kalpana Gahoi. Annexure – 4 to the petition, is the copy of the complaint in which it is alleged that the Presenting Officer, while submitting her report to the authorities concerned, made following observations in her report in said departmental enquiry:

> *"Mrs. Kalpana Gahoi's own behaviour, her character, callous attitude and untrustworthy nature, lacking in devotion, taking duty lightly, spoiling the atmosphere of a place that is a temple of learning of innocent children are proofs enough for her to be rigorously punished as such people's continuing to stay in such holy place in not fully unhealthy but their presence shall desecrate the temple of learning leaving the place soiled with indelible marks."*

4) The charge against respondent No. 2, which she was facing before the departmental enquiry, are incorporated in the written report, a copy of which is Annexure -1 to the affidavit filed with this petition.

5) Section 499 of the I.P.C., which defines the offence of 'defamation', provides second Exception to it, as under:

> *"Second Exception. – Public conduct of public servants. – It is not defamation to express in a good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further."*

In view of the aforesaid exception, even if what the respondent No. 2 says in her complaint, is taken to be true, the act alleged on the part of the petitioner, does not constitute the offence punishable under Section 500 of the I.P.C.

6) Apart from this, there appears to be no publication of the above mentioned report as the same has been endorsed only to the concerned authorities and none else. For that reason also, the ingredients of the offence of 'defamation', are not made out.

7) Learned counsel for respondent No. 2 argued that it is not a case of a public servant and he relied on the principle of law laid down in ***N.K. Sharma Vs. Abhimanyu, reported in (2006) 2 Supreme Court Cases (cri) 135.*** I have gone through said case law, that pertains to the employee of a co-operative society. The present case is not of a co-operative society. However, it is admitted that the Kendriya Vidyalaya, of which the petitioner and respondent No. 2 were the employees, was run by an Organization, registered under the Societies' Registration Act. The Kendriya Vidyalaya's are controlled by the Government of India and funded by it. Considering the definition of "Public Servant'

given in Clause twelfth of Section 21 of the I.P.C., this Court has no hesitation in holding that a post held by a teacher in the Kendriya Vidyalaya, is that of a public servant.

8) For the reasons, as discussed above, neither there is publication of the alleged offending remarks, nor the observations are beyond the Exception 2 to Section 499 of the I.P.C. The impugned order summoning the petitioner for her trial for allegedly committing offence punishable under Section 500 of the I.P.C., is erroneous in law. The same is liable to be quashed. The proceedings in criminal complaint case No. 08 of 2005, Kalpana Gahoi Vs. Rajni H. Uppal, pending in the court of Chief Judicial Magistrate, Dehradun, are hereby quashed. The petition under Section 482 of the Code of Criminal Procedure, 1973, stands disposed of. (Stay Vacation Application No. 1138 of 2005 also stands disposed of).

(Prafulla C. Pant, J.)

Dt. 27th September, 2006.
H.Negi